Supreme Court, U.S.
FILED

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No. _____

IN THE

Supreme Court of the United States

October Term, 1998

ANNE M. GLAVEY,

Petitioner,

-against-

HIGHLAND LAKES COUNTRY CLUB AND COMMUNITY ASSOCIATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Appellate Division of the Superior Court of New Jersey violate Petitioner's Due Process rights by refusing her leave to file an Appellate brief where Petitioner was only given four (4) days notice of the deadline, and Petitioner pro se timely advised the Court that she was suffering a severe illness and physically could not complete her brief in the time required, and the Court dismissed her appeal?

2. Did the Supreme Court of New Jersey, and the Superior Court of New Jersey (Appellate Division and Law Division) violate Petitioner's Due Process rights by refusing to set aside awards in favor of a quasi-governmental "homeowner's association" which purported to impose "association fees", assessments and late charges, despite the lack of restrictive covenants on the relevant property, and where the ultimate Judgment (including "late fees", attorney's fees and the like) was approximately ten times the amount allegedly due?

3. Are those not compelling reasons and of public importance to grant Certiorari?

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Anne M. Glavey, respectfully prays that a writ of certiorari issue to review the Order of the Supreme Court of the State of New Jersey which denied reconsideration on Petition for Certification of an Amended Final Judgment of the Superior Court of New Jersey, which has not been meritoriously reviewed by the Appellate Division of the Superior Court, because Petitioner was taken ill while out of the country and unable to timely file her brief, which denied this Petitioner her Due Process Rights.

OPINIONS BELOW

The Order of the Supreme Court of New Jersey denying reconsideration appears as Appendix A to this Petition. The Order denying petition for certification appears as Appendix B. The Order from the Appellate Division of the Superior Court of New Jersey denying Petitioner's brief Nunc Pro Tunc Appears as Appendix C. The Amended Final Judgment of the Superior Court of New Jersey appears as Appendix D.

JURISDICTION

The last Order of the Supreme Court of New Jersey in this matter was filed on October 23, 1998. This appeal is made pursuant to Supreme Court rule within ninety (90) days of the date of such decision, in addition to the sixty (60) days extension granted by this Court, up to March 22, 1999. This Court's Jurisdiction is invoked under Title 28 USC Section 1257(a).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

Amendment Fourteen to the United States Constitution is set forth in Appendix E.

STATEMENT OF THE CASE

It is Fundamental Law that no one can be deprived of life, liberty or property without Due Process of the Law.

In this case, on March 14, 1977, Petitioner acquired

title, by one deed, to one tract of land composed of three lots designated on a filed map. There was a house located on Lot 5, a driveway serving the residence partially located on Lot 4, and Lot 6 was vacant. The deed to petitioner described the property as a single tract with a six course metes and bounds description.

Petitioner's predecessors in title acquired the property by three separate deeds. The middle lot 5, had restrictive convenants imposed on it for the Highland Lakes community. The two end lots, 4 and 6, were acquired by the predecessor in title directly from the developer of the Highland Lakes community and did not contain any restrictive covenants or requirements for membership in the community association.

On August 2, 1989, Highland Lakes Country Club and Community Association (hereafter referred to as HLCCCA) commenced suit against petitioner on the basis of her ownership of Lot 5 only, for the payment of initiation fees, annual dues, fair share of road improvement and maintenance charges, property transfer fees, and late payment charges (A.8). HLCCCA never amended its Complaint to assess petitioner for charges against lots 4 and 6, both of which lots had no requirement for membership or payment of dues.

Petitioner had never previously received any bills or notices for payment of dues or notification of any requirement that she become a member of the community association.

On April 23, 1993, judgment was entered against petitioner in the amount of $12,119.32 plus attorney's fees in the amount of $2,500, (A.10). The Judgment included dues, assessments and late payments charges for three lots, in

addition to road assessments. Petitioner then filed Notice of Appeal from that judgment on July 30, 1993, by way of her attorney - William J. McGovern. In the meanwhile, petitioner was ordered to file a cash bond in the amount of the Judgment, plus costs of $150.68 together with interest of $1078.91 through the calendar year 1994 totaling $15848.91 (A.12) with the Superior Court Trust Fund.

In addition, petitioner paid $500 in partial dues to HLCCCA for 1994, (A.14) which was cashed by them.

On March 30, 1995, the Appellate Division afffirmed in part reversed in part, and remanded for further proceedings, (A.15). The Appellate Division determined that the petitioner presented a defense of unequal assessment "unless the Association has enacted a valid exception to the by-laws." *(Cf. Loechner v. Campoli, 49 NJ.* 504 (1967) (contiguous lots in common ownership create a single parcel or tract of land)." (See A. 19).

Please see (A.20) regarding the award of attorneys fees. "Upon the submission of a certification of services, the trial judge awarded $2,500. This award represents an appropriate exercise of the trial judge's discretion." (Footnote): "*The member has only agreed to pay reasonable attorney's fees;* the member has not necessary subscribed to the business judgment of the Association to pay its retained attorney on a contingent fee basis.

The Appellate Division stated: "Therefore, it is necessary that the *judgment as to damages be vacated* and the matter remanded for further findings of fact and supplemental testimony, if necessary *concerning the validity of the methology*

employed by the Association. (A. 20).

A remand hearing was held before the Honorable Lorraine C. Parker on January 17, 1996. In a written opinion filed March 21, 1996, under the holding in *Loechner v. Campoli*, 49 N.J. 504 (1967) and despite specific citations by the Appellate Division in its judgment directing a remad hearing, the trial court failed to find any valid exception to the Bylaws that had been enacted by HLCCCA and should not have upheld the assessments made by HLCCCA under the circumstances because no valid exception was ever proved by HLCCCA during the remand hearing.

The trial court, in its written decision, indicated that petitioner's deed described three separate lots with three separate metes and bounds descriptions. That is contrary to the deed that was in evidence.

HLCCCA Bylaws contain no standards or direction as to a methodology to use for billing members. Such use of municipal tax records to determine the number of lots that make up a particular property and the assessment of dues for such number of lots is contrary to law and arbitrary in that no member of HLCCCA can cause the tax assessor to act with respect to how he/she assesses lots and that methodology is clearly contrary to law and specifically contravenes *Loechner v. Campoli, supra*. Additionally, since neither petitioner's deed or the deeds to her predecessors in title contained any restrictive convenants or obligations to pay dues or join HLCCCA, as to Lots 4 and 6, HLCCCA should have been precluded from assessing *any monies* against petitioner for those two lots. The trial court's entry of judgment for dues, assessments, late charges and counsel fees on those two lots

was contrary to law.

The written Opinion on March 21, 1996 of the remand trial reinstated the previous trial court's decision and judgment in the amount of $14,619.64. In addition, Judge Parker directed that HLCCCA could apply to amend that judgment in the event additional fees had accrued. HLCCCA counsel submitted a Notice of Motion on April 9, 1996, Certification of Amounts due, Attorneys Certification of Services and a proposed Order for *Final Judgment* (A.22). There is really no telling how those figures were arrived at. But it is clear that the dollar basis of $14,619.64 was used to augment the finance charges and thereafter contingency attorneys fees thereon, instead of the lower dollar amount of $12,199.32 (the original judgment).

In addition, it is also clear that HLCCCA have demanded an additional $1422.64 plus $1726.27 equaling *$3248.91 in more attorneys fees at a contingency rate.* In the last paragraph of the proposed Order for Final Judgment, HLCCCA have further demanded more *reasonable attorneys fees* in the amount of $5, 648.91. The total figure demanded in the proposed Order is *$10, 897.82 in attorneys fees.* HLCCCA previously received $2500 in Attorneys' fees, added to the original judgment. That brings a total of *$13,397.82 in attorneys fees.*

On April 15, 1996, the attorney for HLCCCA wrote to Judge Parker stating that he wished "*to make a few changes and corrections* to the wording in the Order" and enclosed a *corrected Order*, (A.24). He included another Certification of services at an hourly rate of $250.00 in additional demand of *$7500 in attorneys' fees*, and a proposed *Amended Final*

Judgment. The demand for *Attorneys fees* has now reached the level of *$20,897.82*. (A4)

In addition, HLCCCA did not file a formal Notice of Motion nor submit same under the five day rule.

The Judgment after trial on Remand from the Appellate Division was signed by Judge Parker on May 31, 1996, (A.25). As this Court will note, the paragraph relating to *Attorneys fees is crossed out in its entirety*. And rightly so, as the attorneys fees in the amount of $2500 had been decided by the original trial Court and affirmed by the Appellate Division.

On July 15, 1996, petitioner filed a Notice of Appeal Pro Se, no longer able to afford the services of attorney - Mr. McGovern.

Prior to the Remand hearing of January 1966, petitioner had filed Chapter 13 bankruptcy in December, 1995. She did not list HLCCCA as debtor as she had understood that they were now a Creditor, in light of the fact that she had expected monies to be returned to her which was lodged with the Trust Fund. Petitioner made a mistake, and obviously, to her detriment, as apparently all charges would have been adjusted by the Bankruptcy Court. Instead Judge Parker threatened to hold petitioner in contempt of Court for not listing HLCCCA in the bankruptcy petition (A.27). Indeed, all proceedings should have been stayed under the United States Bankruptcy Code, 11 U.S.C. §362.

The attorneys for HLCCCA moved before the Bankruptcy Court to have petitioners bankruptcy dismissed. It was denied, but the stay was lifted and they were allowed to

proceed independently of the bankruptcy. On August 30, 1996, HLCCCA's counsel wrote a letter to Judge Parker requesting her to "please expeditiously sign the enclosed Order and return the same to me in the enclosed postage-paid, self-addressed envelope."(A.29).

Judge Parker signed the Amended Final Judgment Order on September 12, 1996 (A. 4) and it was entered without following the requirements of the Rules of Court for the filing of a formal motion or submission of same under the five day rule. As a result, this petitioner was not given the opportunity to object to the additional monies sought. The entry of the Amended Final Judgment increasing the total judgment from $14,619.64 to $34,738.41 without providing an opportunity for this petitioner to submit her Objections to same was improper.

Indeed, it was not the *Amended* Final judgment that HLCCCA attorney requested Judge Parker to sign in his letter of August 30, 1996, but the *Final Judgment*, with the Lesser amount, which was already inflated.

Please see petitioner's attorney's Certification in Support of Petition for Certification to the New Jersey Supreme Court (A.31).

On October 2, 1996, Petitioner, Pro se, filed a Notice of Motion with the Superior Court to Vacate the Amended Final Judgment. It was denied by Order entered on October 25, 1996 (A.35). Clearly, the "*Amended Final Judgment was (not) entered properly.*"

On December 1, 1996, Petitioner, pro se, filed a Notice of Motion with the Superior Court of New Jersey, to stay the

enforcement of the Judgment, and that was denied by Order entered on December 23, 1996. (A.36) Clearly, "Defendant shows (no) meritorious grounds for appeal."

In December, 1996, Petitioner, Pro se, filed a Notice of Amended Appeal. On December 13, 1996, Petitioner filed a Notice of Motion with the Appellate Division for Partial Summary Disposition, or in the Alternative a Stay Pending the Appeal. On December 20, 1996, HLCCCA attorneys filed a Notice of motion for Summary Disposition, also Opposing petitioner's Motion. Both Motions were denied by Order entered on February 7, 1997. On March 12, 1997, Petitioner filed a Notice of Motion to Supplement the Record and on March 19, 1997, it was Opposed. On April 4, 1997, the Motion was granted in the greater part to the Petitioner.

On March 27, April 01, and April 21, 1997, Petitioner wrote to the attorneys for HLCCCA, requesting them to send a copy of the check which had been turned over by the Trust Fund of the Superior Court, and also to show her where they had given any credit for the $500 partial dues for 1994. All requests were in vain.

On April 21, 1997, Petitioner filed a Notice of Motion for Post Judgment Discovery and it was Opposed on May 2, 1997. HLCCCA did not properly apply the $500 towards the amount allegedly owed. In addition, they did not include a copy of the check from the Trust Fund as an Exhibit. Petitioner was once again compelled to write to the Clerk of the Appellate Division to force them to surrender a copy of the check. (A.38). The Motion for Post Judgment Discovery was denied by Order of May 28, 1997. A copy of the check which included interest to-date in the amount of $18,271.98 (A.40) was received by the

petitioner afterwards.

In the meanwhile, petitioner had received a copy of the cashed check for the $500, from her Credit Union, (A. 14) On June 25, 1997, petitioner filed a Notice of Motion to complete the Record for the brief, and to add the check from the Trust Fund and the cashed $500 check. In early July, 1997, petitioner went to Ireland to attend to matters for her elderly Mother. She works for Delta Airlines and travels free. On July 7, 1997, HLCCCA opposed the Motion, but it was not yet received by petitioner before she left for Ireland.

Shortly after Petitioner arrived in Ireland, she fell seriously ill and had to be hospitalized, (A.41). Petitioner returned to New York on August 7, 1997, because of her concern for the Brief. The Motion to supplement the Record was denied and an Order entered on July 30, 1997. In addition, it stated that: "*Her brief is to be filed by August 11, 1997 or the appeal will be dismissed sua sponte by the Court.*"(A.43) It was only received by this Petitioner on August 7, 1997.

Petitioner was ill during the months of July and August. Please see Doctor's Letter (A.45) and letters from Delta Airlines - her Employer, (A.46 & A.47). On August 9, 1997, this Petitioner filed a Notice of Motion for an extension of time to file her brief. On August 21, 1997, the Motion was Opposed and the Motion was denied by Order entered on September 11, 1997. The Appeal was dismissed.(A.48)

On November 7, 1997, the Appellate Division denied Petitioner's Motion for reconsideration. On November 13, 1997, the Appellate Division denied Petitioner's motion to file her brief Nunc Pro tunc, (A.3)

In the meanwhile, Petitioner's salary is being garnished to the tune of 25% (twenty-five percent). (A.49)

REASONS FOR GRANTING THE WRIT

The Supreme Court of New Jersey, in affirming the Appellate Division acted against its own standard of Review, and violated the established proceedings of this Honorable Court and the Fourteenth Amendment of the United States Constitution.

As set forth above, the instant Petition for Certiorari arises from the New Jersey state court system, to wit, the ultimate refusal of the Supreme Court of the State of New Jersey to grant your petitioner leave to file an Appellate Brief, seeking to appeal from the decision of the Superior Court which resulted in a judgment against Petitioner ten times the purported underlying liability for "association dues" in a situation where the "association dues" and other charges were ultimately imposed upon petitioner despite the complete absence of a restrictive convenant on her property which would or could impose those association dues and charges. Petitioner contends, quite simply, that the New Jersey Supreme Court denied her due process rights guaranteed by the United States Constitution, specifically the Fourteenth Amendment thereto.

State Courts bear equal responsibility with Federal courts to guard and protect rights secured by the Constitution of the United States. *Horn v. O'Cheskey,* 378 F.Supp. 1280 (I) N.M. 1974). Relevant to the instant certiorari application, the right to file appeal is a property interest which may not be revoked absent due process of law. *Kertes Ent., Inc. v. Orange*

Village Planning Zoning Comm. 71 Ohio App.3rd 151, 593 N.E.2d 306 (Ohio 85h Dist.App. 1990).

Although a state is not required to provide an appeal to meet due process requirement where it does so, it cannot put limitations which are discriminatory, arbitrary or unrelated to any possible state purpose. *Compton v. Naylor*, 392 F. Supp. 575 (S.D. Tex. 1975).

Here as noted, after a series of extensions of time to perfect petitioner's Appeal in the Appellate Division, necessitated by her adversary's refusal to provide petitioner with documents necessary for her Brief, the New Jersey Appellate Division Court presented petitioner with a notice giving her four days to complete her appeal. Petitioner, representing herself there, as here, pro se, fell severely ill, and could neither work, nor could she work on preparing her Brief on time. Accordingly, petitioner made a request for extension of time to the New Jersey Appellate Court, which had previously granted extensions to respondent, and petitioner's request was denied. Petitioner contends that the Court's refusal to grant the additional extension in the face of petitioner's illness was arbitrary and capricious, and constituted a violation of Petitioner's due process rights.

Petitioner submits that her case is distinguishable from such cases as *Wainwright v. Turna*, 455 U.S. 586 (1982). There, a petitioning party had an attorney who failed to file a petition for certiorari review to the state supreme court because petitioner's counsel simply failed to do so. This Court correctly held that where the apparent deprivation of rights is caused by the party's own counsel - and not by the state or its court - no due process rights are implicated or violated.

In this case, by contrast, Petitioner, representing herself, timely advised the state court of her predicament - only four days to prepare papers, and a physical illness which prevented her from doing so. Nonetheless, despite a timely request for additional time, the Appellate Division arbitrarily refused to grant an extension in the same case in which it had done so previously - in some cases for Respondent - without cause nearly as compelling as Petitioner's illness.

This case is also distinguishable from such cases as *Krasniqi v. Dallas County Child Protection Services*, 809 S. W. 2d 927 (Tex. App. 1991) *cert. denied* 503 U.S. 1006, where appellant's had 120 days and a 15 day extension period to file a statement of facts, but simply could show no basis why they "inadvertently" failed to do so. Once again, in the instant case, Petitioner required documents not in her possession - and in the possession of Respondent - to complete her appellate record and to perfect her appeal - and for this reason, required extensions prior to the last one. Unfortunately, Petitioner suffered an illness, which prevented her from filing a brief as the Appellate Division requested.

In short, Petitioner submits that the state Supreme Court or New Jersey (as did the New Jersey Superior Court Appellate Division) arbitrarily deprived Petitioner of her due process right to Appeal her significant property right of being ostensibly taxed privately and arbitrarily by a quasi-governmental association of which Petitioner had no notice at the time she acquired the subject property.

CONCLUSION

Under the instant circumstances, Petitioner respectfully submits that she has stated a basis for this Court to grant certiorari, to remedy the due process violation she has suffered. It is respectfully requested that the Honorable Court grant the Certiorari because the refusal of the New Jersey Courts to permit Petitioner to file her Brief, or extend her time because of illness, constitutes a violation of the due process rights pursuant to the Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

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APPENDIX A

SUPREME COURT OF NEW JERSEY
September Term 1998
M-177/178

45,150

HIGHLAND LAKES COUNTRY CLUB &
COMMUNITY ASSOCIATION,
Plaintiff,

V. ORDER

AINE, A/K/A/ ANNE M. GLAVEY,
Defendant-Movant.

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to file a motion for reconsideration as within time (M-177) is granted; and it is further

ORDERED that the motion for reconsideration (M-178) is denied.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 22nd day of October, 1998.

s/ Steven Townsend
CLERK OF THE SUPREME COURT